

<sup>2</sup> Claimant also sought payment for medical mileage and an unauthorized medical expense associated with a knee injury, an injury that, at least at this juncture, Respondent does not dispute. Accordingly, respondent agreed to pay these expenses without any objection and they are not at issue in this appeal.

provide an exhaustive list or diagnosis of each of the injuries sustained in any given accident. Thus, claimant believes that his timely notice of “an” accident is sufficient to satisfy the statutory criteria and the ALJ’s Order should be reversed.

Respondent has not filed any brief with the Board, but would presumably argue that claimant’s left shoulder complaints are not causally related to his October 20, 2008 accident. Therefore, the ALJ’s Order should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

There is no dispute (at least at this juncture) that claimant sustained an accidental injury on October 20, 2008 when, in the course and scope of his job, he was jumping across a ditch and fell. At the preliminary hearing, claimant testified that he believes he might have stuck his arms back behind him to break his fall.<sup>3</sup> He immediately felt pain in his left knee and treatment was and continues to be provided through Dr. Alex Neel. Claimant indicated that his left shoulder complaints did not occur immediately after his accident but over time, approximately 1 - 2 weeks later when he began to experience pain.

Claimant first mentioned this complaint to Dr. Neel’s physician’s assistant on January 5, 2009, and was told that Dr. Neel would address the complaint at claimant’s appointment the next month, in February 2009.<sup>4</sup> Shortly before that February 2009 appointment claimant advised his employer of his shoulder problems. Claimant concedes this is the first time he spoke to his employer about his shoulder complaints. Respondent told claimant to proceed under his own health plan as his shoulder complaints weren’t encompassed by his workers compensation claim because claimant had not provided notice of that aspect of his injuries.<sup>5</sup>

Dr. Neel saw claimant on February 5, 2009 and recommended that he have an MRI for his shoulder problems. Dr. Neel has also opined that claimant has a probable rotator cuff tear “that is related to his fall in the ditch as it came on within a week post fall”.<sup>6</sup>

Claimant was also evaluated by Dr. George Fluter who opined that claimant’s left shoulder complaints reflect a condition that “[t]here is a causal/contributory relationship

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<sup>3</sup> P.H. Trans. at 7.

<sup>4</sup> *Id.* at 9-10.

<sup>5</sup> *Id.* at 16-17.

<sup>6</sup> *Id.*, Cl. Ex. 1 at 1 (Dr. Neel’s Feb. 5, 2009 report).

between the condition affecting Mr. Battles' left shoulder and the reported injury of 10/22/08, and more likely than not, was aggravated by the use of crutches."<sup>7</sup>

The ALJ denied claimant's request for medical treatment to his left shoulder as she concluded claimant had failed to tender timely notice to respondent "of said injury within ten (10) days or within seventy (75) days as required by K.S.A. 44-520."<sup>8</sup> This Board Member has reviewed the record in this matter and concludes the ALJ's Order should be reversed.

The Board has previously addressed this issue and has held the Workers Compensation Act requires the injured worker to report **an accident**.<sup>9</sup> The Act does not require the worker to itemize or list every body part that is affected by that accident. To hold otherwise would impose an unmanageable burden upon the employee.<sup>10</sup>

K.S.A. 44-520 requires an injured worker to give notice to her employer of any work-related accident. The statute does **not** require that the employee give the employer notice of injury or of each and every body part that may have been injured or affected by an accident. Here, respondent does not argue that claimant failed to provide *any* notice of his October 20, 2008 accident nor does it argue that the notice of *an accident* that was provided was less than timely. Instead, respondent simply argues that it was timely notified of claimant's knee complaints but the shoulder complaints were not asserted until shortly before the February 5, 2009 office visit, outside the 75 day window. This argument is not persuasive. The Board has long held that the notice of **an accident** generally satisfies the notice requirement for any injuries that resulted from that accident, as well as any subsequent work-related aggravations or injuries that occurred as a natural consequence of that accident.<sup>11</sup>

For these reasons, the ALJ's Order should be reversed and claimant is entitled to an Order granting him medical treatment for his left shoulder complaints.

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<sup>7</sup> *Id.*, Cl. Ex. 1 at 6 (Dr. Fluter's Apr. 13, 2009 report).

<sup>8</sup> ALJ Order (Jun. 1, 2009).

<sup>9</sup> K.S.A. 44-520; *McBroom v. Senior Aerospace Composites*, No. 1,005,428, 2003 WL 359843 (Kan. WCAB Jan. 21, 2003).

<sup>10</sup> *Depew v. NCR Engineering & Manufacturing*, 263 Kan. 15, 947 P.2d 1 (1997).

<sup>11</sup> *Watts v. Midwest Painting*, Nos. 1,022,574 & 1,022,575, 2007 WL 4296014 (Kan. WCAB Nov. 28, 2007); *Trujillo v. Chem-Trol, Inc.*, No. 1,036,070, 2008 WL 375812 (Kan. WCAB Jan. 29, 2008).

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.<sup>12</sup> Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Pamela J. Fuller dated June 1, 2009, is reversed. Claimant is entitled to the medical treatment he seeks for his left shoulder complaints. Respondent should designate a list of three orthopaedic physicians from which claimant may select one to direct his course of care.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August 2009.

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JULIE A.N. SAMPLE  
BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant  
Scott J. Mann, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge

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<sup>12</sup> K.S.A. 44-534a.